

The Examiner asserted that the inventions were related as process and apparatus for its practice, and that the inventions are distinct from each other under M.P.E.P. § 806.05(e) because the "apparatus can be used to practice another and materially different process, for example, monitor cracks in a welded sheet."

Applicants initially note that claim 33 depends from independent claim 1, such that the asserted restriction between the method claims of claims 1 – 32 and the apparatus claims of claims 33 – 35 is improper and should be withdrawn.

Further, Applicants respectfully submit that the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction requirement were not required. As discussed above, as the recited features of the apparatus in claim 33 are substantially similar to those of independent apparatus claim 36, Applicants submit that no additional burden is placed on the Examiner in examining the merits of claims 36 – 38.

Moreover, while the Examiner has alleged a possible distinction between the two identified groups of invention, the Examiner has not shown that a concurrent examination of these groups, and each species, would present a "serious burden." In fact, as the Examiner has acknowledged that the individual groups would be classified in the same Class 162, and as there is no appropriate statement that the search areas required to examine the invention of group I would not overlap into the search areas for examining the invention of group II, and *vice versa*, Applicants respectfully submit that the search for the combination of features recited in the claims of the above-noted

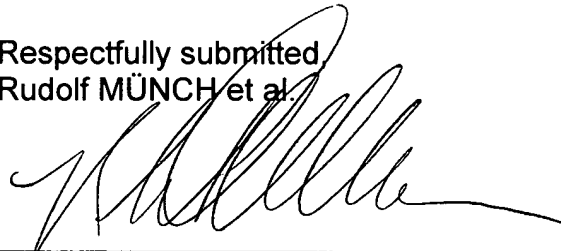
groups and the individual species, if not totally co-extensive, would appear to have a very substantial degree of overlap.

Because the search for each group and species of invention is substantially the same, Applicants submit that no undue or serious burden would be presented in concurrently examining Groups I and II. Thus, for the above-noted reasons, and consistent with the office policy set forth above in M.P.E.P. § 803, Applicants respectfully request that the Examiner reconsider and withdraw the restriction and species requirement in this application.

For all of the above reasons, the Examiner's restriction is believed to be improper. Nevertheless, Applicants have elected, with traverse, the invention defined by Group I, i.e., claims 1 – 32, in the event that the Examiner chooses not to reconsider and withdraw the restriction or species requirement.

Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
Rudolf MÜNCH et al.



Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

June 5, 2006
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191